

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

CHAPTER 7

IN RE:

CASE NO. 23-42634-NHL

Peter Julian Depaola,

Debtor.

AFFIRMATION IN SUPPORT
OF MOTION FOR RELIEF
FROM THE AUTOMATIC
STAY

-----X

Brett L. Messinger, the undersigned, an attorney duly licensed to practice law in the State of New York and admitted to practice before the courts in the Eastern District of New York, affirms the following under penalty of perjury:

1. That I am an attorney with the firm of Duane Morris LLP, the attorneys for TD Bank, N.A. ("**TD Bank**" and/or "**Movant**"), a Secured Creditor of the above referenced Debtor herein and I am fully familiar with the facts and circumstances of this case.

2. I make this Affirmation in Support of Movant's Motion for an Order pursuant to 11 U.S.C. § 362(d) vacating the automatic stay imposed by virtue of 11 U.S.C. § 362 on the property located at 7921 Narrows Avenue, Brooklyn, New York 11209.

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 157; 11 U.S.C. § 362; and the Bankruptcy Amendments and Federal Judgeships Act of 1984.

2. TD Bank is a national banking association with an address of 2035 Limestone Road, Wilmington, DE 19808.

4. Peter Julian Depaola (the “Debtor”) is a resident of the State of New York with an address of 7921 Narrows Avenue, Brooklyn, New York 11209 (the “Property”).

5. The Property is located at 7921 Narrows Avenue, Brooklyn, New York 11209, in Kings County, and is more fully described as follows:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON ERECTED, SITUATE, LYING AND BEING IN THE BOROUGH OF BROOKLYN, COUNTY OF KINGS, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY SIDE OF NARROWS AVENUE, DISTANT 65 FEET NORTHERLY FROM THE CORNER FORMED BY THE INTERSECTION OF THE NORTHERLY SIDE OF EIGHTIETH STREET AND THE EASTERLY SIDE OF NARROWS AVENUE;

RUNNING THENCE EASTERLY PARALLEL WITH THE NORTHERLY SIDE OF EIGHTIETH STREET 100 FEET;

THENCE NORTHERLY PARALLEL WITH NARROWS AVENUE 80 FEET;

THENCE RUNNING WESTERLY PARALLEL WITH EIGHTIETH STREET 100 FEET TO THE EASTERLY SIDE OF NARROWS AVENUE; AND

THENCE SOUTHERLY ALONG THE EASTERLY SIDE OF NARROW AVENUE 80 FEET TO THE POINT OR PLACE OF BEGINNING.

6. TD Bank is a secured creditor of the Debtor by virtue of being the holder of a Note and Mortgage, dated October 17, 2022, given by Debtor and Loredana Depaola in the original principal amount of \$500,000.00 pledging the Property as security.

7. In connection with a loan dated October 17, 2022, Debtor entered into a loan transaction, by which, TD Bank, provided a loan to Debtor in the amount of \$500,000.00. The loan was evidenced by a Home Equity Line of Credit Agreement and Disclosure Statement (the “Note”) signed by Debtor. A true and correct copy of the Note is attached hereto as Exhibit A.

8. The Note was secured by a Mortgage (the “Mortgage”) on the Property executed by Debtor and Loredana Depaola (“Mortgagors”) and delivered to TD Bank. The Mortgage was recorded on October 27, 2022 in the Office of the City Register of the City of New York, Kings County, in City Register File Number (CRFN): 2022000406263. A true and correct copy of the Mortgage is attached hereto as Exhibit B.

9. TD Bank is, and at all times material hereto, the owner and holder of the Note and Mortgage.

10. On July 26, 2023 (the “**Petition Date**”), the Debtor filed the *instant* bankruptcy by way of a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York (the “**Court**”).

11. As of the Petition Date, the amount due and owing and unpaid to TD Bank under the Note and Mortgage, including unpaid principal, accrued interest, late charges fees and applicable fees thereon, was \$503,369.64.

12. On October 31, 2023, TD Bank filed its Proof of Claim No. 8 listing a total secured claim in the amount of \$503,369.64 and pre-petition arrears of \$3,662.94.

13. Mortgagors are currently in default under the Note and Mortgage by failing to make the payment due October 20, 2023, and all subsequent payments thereafter.

14. Mortgagors never tendered the sum required to bring the loan account current.

15. On July 18, 2024, this Court entered an Order Converting Chapter 11 Case to Chapter 7 (Docket # 79).

16. The loan remains due and owing for the October 20, 2023 payment. The total amount due and owing and unpaid to TD Bank under the Note and

Mortgage, including unpaid principal, accrued interest, late charges fees and applicable fees thereon, was \$545,626.88 through September 24, 2024.

17. TD Bank, as holder of the Mortgage, and according to the laws of the State of New York and the terms and conditions of said Mortgage, desires to proceed with its rights and remedies, including foreclosure actions. However, by reason of Debtor having filed the instant Chapter 7 bankruptcy with this Court on July 26, 2023, TD Bank is stayed from proceeding with the aforesaid actions.

18. By failing to make mortgage payments, Debtor has failed to provide Movant with adequate protection for its security, entitling Movant, its successors and/or assigns, to relief from the automatic stay. As a result, relief from stay is warranted pursuant to Section 362(d)(1).

19. A true and correct copy of the payoff quote and the payment history for Debtor's account as of September 24, 2024 is attached hereto as **Exhibit C**.

20. That by virtue of the foregoing, the Debtor has caused Movant to suffer prejudicial delay; the collateral is decreasing in value and adequate protection requires maintenance of the Movant's interest in the collateral through regular payments and the payment of taxes, and, therefore, pursuant to 11 U.S.C. § 362(d), cause exists to vacate the automatic stay.

21. Pursuant to 11 U.S.C. § 362(d), on request of a party in interest, the court shall grant relief from the stay if the creditor is not adequately protected, or if

the debtor has no equity in the property and such property is not necessary to an effective reorganization. Likewise, under 11 U.S.C. § 554, “on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.”

22. The Property is not necessary for an effective reorganization of the Debtor, as Chapter 7 contemplates liquidation, not reorganization. Consequently, Movant is entitled to relief from the stay in order to pursue its foreclosure action.

23. Upon information and belief, the only parties who are entitled to notice of these proceedings are the Debtor, the Debtor's attorney, the Obligors/Mortgagors, the U.S. Trustee and the Chapter 7 Trustee.

24. No prior application has been made for the relief requested herein.

WHEREFORE, it is respectfully requested that under all the facts and circumstances in this case, an order be made pursuant to 11 U.S.C. § 362(d):

(A) Vacating the automatic stay imposed against the Secured Creditor, TD Bank, N.A. by the Chapter 7 Bankruptcy filing of Peter Julian Depaola with regard to the Property located at 7921 Narrows Avenue, Brooklyn, New York 11209; and

(B) Granting permission to TD Bank, N.A. to enforce its security interest by proceeding with its rights and remedies, including foreclosure actions, against the

Debtor and the Property located at 7921 Narrows Avenue, Brooklyn, New York 11209; and

- (C) Waiving the 14-day stay under Bankruptcy Rule 4001(a)(3); and
- (D) For such other, further and different relief as this Court may deem just, proper and equitable.

Dated: December 5, 2024

Respectfully submitted,

DUANE MORRIS LLP
Counsel for TD BANK, N.A.

By: /s/ Brett L. Messinger
Brett L. Messinger
New York Bar No. 3987542
30 South 17th Street
Philadelphia, PA 19103-4196
Telephone: 215.979.1508
Facsimile: 215.689.4903
Email: BLMessinger@duanemorris.com